

June 17, 2010

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## **National Association of Environmental Professionals**

### **Comments on CEQ Review of MMS NEPA Policies, Practices, and Procedures for OCS Oil and Gas Exploration and Development**

The National Association of Environmental Professionals (NAEP) is grateful for the opportunity to comment on the Council on Environmental Quality's (CEQ) review of the MMS NEPA policies, practices, and procedures for OCS oil and gas exploration and development. The NAEP is a multidisciplinary, professional association dedicated to the promotion of ethical practices, technical competency, and professional standards in the environmental fields. Our members reflect a diversity of employers, including government, industry, academia, consulting firms, and the private sector in the U.S. and abroad. More than 150 of our members are currently active in the NAEP NEPA working group. The working group's mission is to improve environmental impact assessment as performed under the National Environmental Policy Act. NAEP respectfully submits the following comments and questions for CEQ to consider.

#### **Federal resources**

CEQ requested comments on what resources are available within federal agencies that have a stake in OCS oil and gas exploration to participate in NEPA reviews. The central agency to OCS oil and gas activities, the Minerals Management Service, will soon be replaced. Department of Interior Secretary Ken Salazar issued Order No. 3299 proposing the reorganization of the Minerals Management Service (MMS) into the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue. While we support the creation of the Office of Natural Resources Revenue, we question whether separating MMS into the Bureau of Safety and Environmental Enforcement and the Bureau of Ocean Energy Management will improve the environmental review of OCS oil and gas activities.

The Bureau of Ocean Energy Management (OEM) will manage many of the conventional functions of MMS, including the evaluation, planning, and leasing activities for OCS oil and gas activities. The Bureau of Safety and Environmental Enforcement (SEE) will supervise safety, response, and removal preparedness in addition to its enforcement activities. Although OEM will carry out traditional leasing activities that require environmental analysis, SEE will possess part of the environmental information necessary for OEM to undergo a thorough NEPA review.

Safety, response, and removal preparedness activities must be considered within the environmental planning processes of NEPA. SEE would most likely oversee oil spill response and prevention planning. In order to successfully evaluate all of the potential

environmental consequences of OCS oil and gas activities, OEM will need access to the information collected by SEE. For this reason, OEM and SEE will, at a minimum, need a system in place to share resources and coordinate efforts for the NEPA process.

### **Public engagement**

CEQ requested comments on the degree to which public engagement has been a part of MMS NEPA practice. NAEP believes that the current MMS NEPA practice is not conducive to public engagement as required by NEPA. Leasing plans and accompanying NEPA analyses should be better organized to make environmental information more accessible to the public.

The MMS website contains the environmental information for each stage of permitting on its public comment web page, but the information is not easily accessible from the MMS homepage. The website also lists most of the plans, environmental analysis, and lease sales together without any organizational method. MMS could improve its website by making EISs and EAs accessible from the MMS homepage and by allowing users to jump from the five-year plan to tiered environmental analyses and lease sales through a series of hyperlinks.

MMS does not prepare its environmental analyses in a manner that is easily accessible for public comment. For example, members of the public have a difficult time tracking the tiered programmatic five-year plan through the subsequent environmental impact statements (EISs) and assessments (EAs) for the Deepwater Horizon well. Each tiered environmental analysis claims to incorporate the prior environmental information prepared by MMS. However, a person must know the applicable Grid EA and work backwards through each prior environmental analysis to gather all of the relevant information. The titles of the environmental analyses and proposed leases are confusing as well. The MMS website does not explain its system of project names, canyon block numbers, or planning areas.

### **Sequence of Permitting Stages**

CEQ requested comments on the sequence of permitting stages and associated NEPA submissions for OCS oil and gas activities. The current sequence of permitting stages is advantageous because it allows MMS to tier its environmental analysis in order to avoid duplication and repetitive discussions of the same issues. However, a tiered approach is useful only if each permitting stage is traceable, starting from the five-year program and continuing through to the approval or denial of a well. We are not convinced that MMS adequately considered all of the environmental consequences of its OCS oil and gas activities in the Gulf of Mexico. We summarize the environmental analyses prepared by MMS for the Deepwater Horizon well below. This summary, along with our review of the multiple analyses prepared, demonstrates how difficult the current MMS NEPA process is to follow.

In December 2002, MMS prepared a Programmatic EA for Grid 16 to approve the exploration and development operations of BP. The Programmatic EA included an analysis of specific and cumulative impacts and provides information on the deepwater area within Grid 16. MMS concluded its analysis of each potential impact with a finding of no significant impact. In the discussion of cumulative effects, MMS discussed other

ongoing activities within the Gulf of Mexico and their environmental impacts but did not do an accurate or thorough cumulative impacts analysis. According to MMS, despite the numerous other activities in the Gulf of Mexico, the proposed OCS oil and gas activities would not have cumulatively significant impacts.

The Western and Central Gulf of Mexico multi-sale EIS for 2007 to 2012, issued in April 2007, contains mainly technical and background information specific to the location and types of activities anticipated for the leasing areas. The discussion of environmental and socioeconomic consequences in the Multi-sale EIS is limited and the EIS does not address potential impacts specific to individual sales within the leasing areas.

The 2007 to 2012 Proposed Final Program for the Outer Continental Shelf Oil and Gas Leasing Program (Proposed Final Program) outlines alternatives to the proposed lease sales, incorporates and summarizes the findings of the 2007 to 2012 EIS, and highlights environmental sensitivities in the leasing areas. The Proposed Final Program also includes a list of other uses of the OCS within the leasing plan.

The EA for the Central Gulf of Mexico Lease Sale 206, issued in October 2007, tiered from the Multi-sale EIS. The EA for Central Lease sale 206 does not alter the conclusions of the Multi-sale EIS. The EA incorporates the Multi-sale EIS by reference and discusses other environmental impacts in support of the Multi-sale EIS not known at the time the Multi-sale EIS was created.

MMS established the categorical exclusion for the Deepwater Horizon well more than 20 years ago. The categorical exclusion review is not available on the MMS website. Therefore it is impossible to trace the MMS analysis of environmental consequences down to the individual well. MMS should include its categorical exclusion reviews on the MMS website with the EISs and EAs to show the entire permitting sequence.

The current permitting system is not conducive to a comprehensive evaluation of all relevant environmental impacts of OCS oil and gas activities. MMS has not explained the relationship between environmental analyses at each permitting stage, so it is not clear whether all of the environmental impacts are being considered.

In addition, MMS should assess environmental impacts based on the *possibility* of occurrence instead of the *probability* that an impact will occur. Although NEPA does not require a worst-case analysis, MMS must assess the reasonably foreseeable consequences of its activities. For example, as evidenced by the Deepwater Horizon incident among others, the possibility of an oil spill is a reasonably foreseeable significant adverse effect on the human environment. When MMS does not properly evaluate environmental impacts, especially at the programmatic level, the tiered permitting approach fails.

#### **Other questions and comments:**

#### **Should an agency be required to periodically review its list of categorical exclusions?**

The quantity of oil developed and type of exploratory techniques used in offshore oil development have changed since the issuance of the CER used for the Horizon well. We ask CEQ to consider whether a federal agency such as MMS should be required to

institute a periodic review and update of its categorical exclusion list to accommodate for these changes.

**To what degree has public engagement been a part of MMS NEPA practice, particularly as it deals with categorical exclusions?**

As indicated in our previous comments, NAEP believes that MMS needs to improve its public engagement practices so that our members and other stakeholders can easily access information on MMS NEPA practices and NEPA work completed along with the relevant studies and other documentation relied upon by MMS in reaching decisions. To that end, we request that MMS be required to make its CATEX determinations available to the public for at least a 30-day comment period.

**Oil spill risk analysis**

The MMS policy to analyze the risk of an oil spill is not effective. Currently, MMS bases the potential of a spill occurring on historical OCS spill rates. This backward-looking policy undermines the goal to analyze potential impacts. The likelihood of an oil spill occurring should not be the decisive factor for evaluating potential impacts.

Sincerely,



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